Supreme Court, U.S.
F I L E D
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No. 92-1705

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

SUSAN H. MALONEY,

Petitioner

versus

JOSEPH SALAFIA, ET AL

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

REPLY BRIEF FOR THE PETITIONER

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TABLE OF AUTHORITIES CITED

Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, No 91-1657, Argued January 12, 1993, Decided March 3, 1993

Reply Brief

In answer to the brief in opposition a number of points need to be clarified. Due to the shortness of time allowed me to answer, I will list in chronological order these points.

1. The brief in opposition claims that the injunction order of December 1, 1983 was dissolved on December 16, 1983. This is untrue and can be documented. No formal order dissolving said injunction exists and respondent can not produce one.

a. Therefore any action (the ejectment of the petitioner) done with the alleged December 16, 1983 order as a basis in law is improper.

2. On December 27, 1983 respondent, in his individual capacity, notified the petitioner that he would be returning on January 4, 1984 to seize said property.

a. On January 4, 1984, respondent served process upon the petitioner and seized property that day.

b. In 1990, the petitioner received notice during court proceedings that no sheriff had been sent to serve an ejectment order upon the petitioner and that she merely vacated her home. This is untrue, however, if no sheriff was sent then the respondent, who did in fact serve process on January 4, 1984, must have been acting as an individual rather than in his capacity as a county sheriff.

3. The respondent was contacted in the interim concerning the absence of return papers within the court. His response being that they were most likely merely lost, and giving no hint to the petitioner that anything improper had occurred.

4. The petitioner did in fact file her petition within ninety days, it being docketed on December 8, 1992 as No. 92-1705. All documents sent to the Supreme Court were sent to all counsel of record at all times.

5. The decision of the Second Circuit Court of Appeals is improper in that it is based on assumption, rather than fact, as to when the petitioner had knowledge of the deprivation done by respondent

Salafia. The petitioner did not know until 1990 that the respondent acted fraudulently until it was stated by the attorneys that respondent Salafia was never even sent to the premises.

CONCLUSION

The petitioner has raised valid questions as to whether or not the respondent acted in his individual or official capacity. A question which can only be answered it seems through right of discovery. The petitioner has filed in a timely fashion and has kept all parties duly apprised of the progression of this instant case. The petitioner has a valid complaint and has presented valid reasons as to why the decision below

should be reviewed.

There was harmful error in that the petitioner was denied the opportunity and right of discovery and the opportunity to amend the complaint.

To cure any defects in this case it should be remanded back to the Second Circuit for further proceeding consistent with the most recent ruling of March 3, 1993, (Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, No. 91-1657) Page 4205 ?.

Respectfully submitted

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the reply brief to Petition for Writ of Certiorari By Petitioner Susan H. Maloney was served by U.S. mail, first class postage prepaid on the following parties on May 29, 1993:

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